

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

MMT Technology, Inc.  
Pleasant Hill, Missouri

Respondent

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Docket No. EPCRA-07-2008-0002

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA or Complainant) and MMT Technology, Inc. (Respondent), have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325 of the Emergency Planning and Community Right to Know Act of 1986 (EPCRA), 42 U.S.C. § 11045.
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 313 of EPCRA, 42 U.S.C. § 11023, and the

regulations promulgated thereunder and codified at 40 C.F.R. § 372, governing the submission of toxic chemical release inventories by owners and operators of covered facilities.

### Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air & Waste Management Division, EPA, Region 7.

4. The Respondent is MMT Technology, Inc., located at 1203 N. 7 Highway, Pleasant Hill, Missouri 64080.

### Statutory and Regulatory Requirements

5. Section 313(a) of EPCRA and 40 C.F.R. § 372.30 provides that an owner or operator of a facility that meets the criteria set forth in EPCRA Section 313(b) and 40 C.F.R. § 372.22 is required to submit annually to the Administrator of EPA and to the State in which the facility is located, no later than July 1<sup>st</sup> of each year, a toxic chemical release inventory reporting form (Form R) for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in quantities exceeding the thresholds under EPCRA Section 313(f) and 40 C.F.R. § 372.28.

6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provides that the requirements of Section 313(a) and 40 C.F.R. § 372.30 apply to an owner and operator of a facility that has 10 or more full-time employees; is in Standard Industrial Classification major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce), or 4953 (limited to facilities regulated under the Resource

Conservation and Recovery Act), or 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis; and that manufactures, processes, or otherwise uses one or more toxic chemicals listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of the applicable thresholds established under EPCRA Section 313(f) and 40 C.F.R. § 372.28.

7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19 authorize EPA to assess a penalty of up to \$27,500 for each violation of Section 313 or EPCRA that occurred on or after January 31, 1997, but before March 15, 2004, and up to \$32,500 for violation of Section of EPCRA that occurred on or after March 15, 2004.

#### Violations

##### General Allegations

8. On October 13, 2006, an authorized EPA representative conducted an inspection of Respondent's facility located at 1203 N. 7 Highway, Pleasant Hill, Missouri 64080, to determine compliance with Section 313 of EPCRA.

9. Respondent is a person as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

10. Respondent is the owner and operator of a facility as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

11. Respondent has 10 or more full-time employees as defined at 40 C.F.R. § 372.3.

12. The facility's primary Standard Industrial Classification code is 3679 as defined by 40 C.F.R. § 372.3.

#### Count I

13. The facts stated in paragraph 8 through 12, above, are herein incorporated.

14. The October 13, 2006, inspection of Respondent's facility revealed that, in calendar year 2003, Respondent manufactured, processed, or otherwise used Lead in excess of 100 pounds.

15. Lead is a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.

16. Respondent failed to submit a Form R for calendar year 2003 for Lead to the Administrator of EPA and to the State of Missouri by July 1, 2004.

17. Respondent's failure to submit a Form R for calendar year 2003 by July 1, 2004, is a violation of Section 313 of EPCRA and of the requirement of 40 C.F.R. § 372.

18. Respondent's failure to comply with 40 C.F.R. Part 372, as set forth above, is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023.

#### Count II

19. The facts stated in paragraph 8 through 12, above, are herein incorporated.

20. The October 13, 2006, inspection of Respondent's facility revealed that, in calendar year 2004, Respondent manufactured, processed, or otherwise used Lead in excess of 100 pounds.

21. Lead is a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.

22. Respondent failed to submit a Form R for calendar year 2004 for Lead to the Administrator of EPA and to the State of Missouri by July 1, 2005.

23. Respondent's failure to submit a Form R for calendar year 2004 by July 1, 2005, is a violation of Section 313 of EPCRA and of the requirement of 40 C.F.R. § 372.

24. Respondent's failure to comply with 40 C.F.R. Part 372, as set forth above, is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023.

Count III

25. The facts stated in paragraph 8 through 12, above, are herein incorporated.

26. The October 13, 2006, inspection of Respondent's facility revealed that, in calendar year 2005, Respondent manufactured, processed, or otherwise used Lead in excess of 100 pounds.

27. Lead is a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.

28. Respondent failed to submit a Form R for calendar year 2005 for Lead to the Administrator of EPA and to the State of Missouri by July 1, 2006.

29. Respondent's failure to submit a Form R for calendar year 2005 by July 1, 2006, is a violation of Section 313 of EPCRA and of the requirement of 40 C.F.R. § 372.

30. Respondent's failure to comply with 40 C.F.R. Part 372, as set forth above, is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023.

CONSENT AGREEMENT

31. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

32. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent

proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.

33. Respondent neither admits nor denies the factual allegations set forth above.

34. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

35. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

36. This Consent Agreement and Final Order addresses all civil and administrative claims for the EPCRA violations identified above, existing through the effective date of this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of EPCRA or other applicable law.

37. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and all regulations promulgated thereunder.

38. The effect of settlement described in paragraph 31 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 37, above, of this Consent Agreement and Final Order.

39. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

40. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a

civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

41. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the Consent Agreement and Final Order and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of EPCRA, 42 U.S.C. § 11023, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Nine Thousand Nine Hundred Thirty Dollars (\$9,930), within thirty days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "Treasurer, United States of America" and shall be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

This payment shall reference docket number EPCRA-07-2008-0002.

2. A copy of the check should be sent to:

Regional Hearing Clerk  
United States Environmental Protection Agency, Region 7  
901 N. Fifth Street  
Kansas City, Kansas 66101; and

Robert W. Richards  
Assistant Regional Counsel  
United States Environmental Protection Agency, Region 7  
901 N. Fifth Street  
Kansas City, Kansas 66101.

3. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

4. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

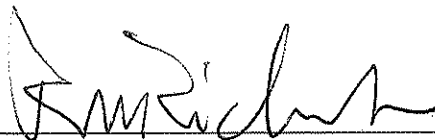
5. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

6. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.



COMPLAINANT:  
U. S. ENVIRONMENTAL PROTECTION AGENCY

By

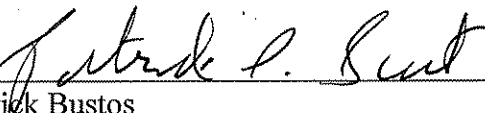


Robert W. Richards  
Assistant Regional Counsel

Date

3/6/08

By



Patrick Bustos  
Chief, Chemical Risk Information Branch  
Air & Waste Management Division

Date

3/6/08

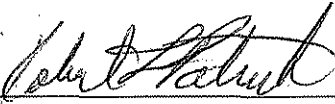
RESPONDENT:  
MMT TECHNOLOGY, INC.  
PLEASANT HILL, MISSOURI

By Dene McElroy

Title PRESIDENT, MMT Technology, Inc.

Date FEBRUARY 19, 2008

IT IS SO ORDERED. This Final Order shall become effective immediately.

By   
Robert Patrick  
Regional Judicial Officer

Date March 11, 2008

IN THE MATTER OF MMT Technology, Inc., Respondent  
Docket No. EPCRA-07-2008-0002

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Robert W. Richards  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Scott Young, Attorney  
Polsinelli Shalton Welte Suelthaus  
700 W. 47th Street  
Suite 1000  
Kansas City, Missouri 64112

Dated: 3/12/08

  
Kathy Robinson  
Hearing Clerk, Region 7